ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring	)	CS Docket No. 95-184
	)	
	)	
	)	
Customer Premises Equipment	)	
	)	

REPLY COMMENTS OF TIME WARNER CABLE AND TIME WARNER COMMUNICATIONS HOLDINGS, INC.

TIME WARNER CABLE
TIME WARNER COMMUNICATIONS HOLDINGS, INC.

Aaron I. Fleischman
Arthur H. Harding
Howard S. Shapiro
Terri B. Natoli
Craig A. Gilley

FLEISCHMAN AND WALSH, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

Their Attorneys

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SUMMARY

- **Efforts to harmonize the cable and telephone inside wiring rules fail to account for substantial differences between narrowband and broadband networks.**

The Commission should not attempt to harmonize the cable and telephone inside wiring rules based on the speculation of eventual "convergence" of wire-based distribution technologies. "Convergence" at some time in the future simply is not a sufficient justification for complete revision of the inside wiring rules because even as convergence occurs, both narrowband and broadband plant will be found in most customers' homes and significant differences between broadband and narrowband facilities will remain. Simply stated, broadband networks, which are capable of simultaneous delivery of multiple services, have unique characteristics which warrant distinctions from the point of demarcation approach applicable to narrowband telephone networks.

- **A change in the broadband point of demarcation in MDUs would violate Congressional directives.**

  -- In the 1992 Cable Act, Congress directed the FCC to establish the broadband point of demarcation where the wiring enters "the interior premises of a subscriber's dwelling unit."

  -- The 1996 Act is explicitly premised on the promotion of facilities-based competition, a goal that would be undermined in MDUs if the point of demarcation is moved.

  -- The 1996 Act reaffirms that cable operators must be allowed to retain ownership and control of broadband wiring extending "from the last multi-user terminal to the premises of the end-user."

  -- The anti-buyout provisions of the 1996 Act also direct the Commission to adopt policies which promote facilities-based competition rather than allow a competitor to take over facilities installed by an existing provider.

  -- Any change in the MDU demarcation point would be contrary to Congress' intent in adopting the 1996 Act to promote private sector deployment of advanced telecommunications facilities.

- **The Commission's current point of demarcation rules are most effective to encourage facilities-based competition.**

The current point of demarcation rules, with minor changes, best promote competition and consumer choice. For single family homes, telephone and cable inside wiring point of demarcation rules should be reconciled at or about 12 inches outside of the point where the wiring enters the home so that consumers are able to make easy transitions among service providers at a readily accessible point of demarcation. In the MDU context, however, the Commission must maintain separate points of demarcation, based on whether the wiring is broadband or narrowband, rather than on what type of service is provided. Retention of the existing broadband point of demarcation creates incentives for competing MVPDs to build their own distribution facilities in MDUs, thereby fostering facilities-based competition.

The narrowband point of demarcation rules should not apply to broadband wiring because those rules were designed only to promote competition for the installation and maintenance of inside wiring, not to promote competition among competing carriers. The current broadband point of demarcation rules promote facilities-based competition (which exists only where each MDU resident is able to access more than one provider's wire) and enhance consumer choice. Moving the broadband point of demarcation to a point further than 12 inches outside a subscriber's dwelling unit, such as the minimum point of entry or the lockbox, would force a cable operator to cede ownership of large portions of its distribution network. Such a result is contrary to Congress' intent and effects an unconstitutional taking of the cable operator's property. The point of demarcation for broadband inside wiring must also <u>not</u> be moved to a point where MDU building owners have control over inside wiring so that they, rather than the MDU residents, are making service provider choices for the entire MDU building.

Finally, competing MVPDs should be subject to the same inside wiring rules as cable operators. Applying the existing cable point of demarcation to all broadband wiring enhances regulatory parity, promotes facilities-based competition, and presents consumers with real choices between multiple competing facilities-based service providers.

- **The Commission should not implement any rules mandating that cable operators cede control over inside wiring prior to subscriber termination of cable service.**

It would be contrary to Congress' express interest and beyond the scope of its statutory authority for the Commission to implement rules mandating that cable operators cede control over inside wiring prior to subscriber termination of their cable service. Congress could have not been any more clear in the 1992 Cable Act -- cable operators are not required to turn over control to subscribers at any time prior to termination. If such a transfer were mandated, it would constitute an unconstitutional taking in violation of cable operators' fifth amendment rights. Further, simultaneous use of broadband inside wiring by separate providers is technically and economically impracticable. Proposals that would have cable operators "share" their wiring with competitors must be rejected.

The creation of incentives for cable operators to cede control of home wiring to consumers upon installation is the best approach for shifting control over wiring from cable operators to subscribers. Thus, the Commission should create incentives for cable operators to voluntarily turn over control of inside wiring, for example, through the negotiation of "social contracts" with the Commission, relaxation of regulations regarding the price of installation and maintenance of inside wiring, and appropriate modification of the technical regulations regarding signal quality.

- **Landlords' ability to restrict competing MVPDs' access to property must not be enhanced by any changes in the Commission's inside wiring rules.**

It is clear from the comments that landlords possess the power to act as a bottleneck for competing services, and often restrict access to MDUs and office buildings. Accordingly, the Commission must ensure that landlords' ability to restrict access is not enhanced by the outcome of this proceeding. On the other hand, state cable access laws protect tenants from arbitrary landlords who deny their tenants the opportunity to subscribe to franchised cable television service. They exist, in part, because of a recognition of the franchise obligations imposed on cable operators and the public interest benefits these obligations bestow on subscribers. The Commission should not interfere with state's efforts to promote competition by allowing franchised cable operators to construct facilities in MDUs served by unfranchised MVPDs.

- **The Commission should apply the existing signal leakage standards to all competing broadband providers.**

The comments demonstrate an overwhelming consensus that the Commission apply the existing signal leakage standards to all competing MVPDs. Further, to the extent warranted, the Commission could apply a reasonable transition period not in excess of one year for competing MVPDs to come into compliance with these standards.

- **Cable equipment is not analogous to telephone CPE.**

The Commission must recognize that the network architecture and services provided by cable systems and telephone carries differ in most relevant respects and warrant different regulatory treatment with regard to the treatment of CPE equipment located on the consumer's premises. The Commission, however, must take into account signal security concerns unique to broadband systems and service.

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REPLY COMMENTS OF TIME WARNER CABLE AND TIME WARNER COMMUNICATIONS HOLDINGS, INC.

Time Warner Cable and Time Warner Communications Holdings, Inc. (collectively "Time Warner") hereby respectfully submit these reply comments in response to the above captioned Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on January 26, 1996.[1/] Time Warner Cable, a division of Time Warner Entertainment Company, L.P., owns and operates cable television systems across the nation. Time Warner Communications Holdings, Inc., an affiliate of Time Warner Cable, provides telephone and other telecommunications and information services in various communities. As such, Time Warner is directly interested in proposals put forth by the Commission in the NPRM, as well as by other commenters in this proceeding.

[1/]Telecommunications Services Inside Wiring, Customer Premises Equipment, Notice of Proposed Rulemaking, CS Docket No. 95-184, FCC 95-504, ___ FCC Rcd ____ (rel. Jan. 26, 1996) ("NPRM").

I. EFFORTS TO HARMONIZE THE CABLE AND TELEPHONE INSIDE WIRING RULES ARE MISDIRECTED.

Time Warner respectfully submits that the phenomenon of "convergence" of the telephone and cable television industries provides no basis for the "harmonization" of inside wiring rules applicable to narrowband and broadband networks. Time Warner joins most commenters in the belief that technological advances will continue to allow competing providers to deliver an expanding array of communications services over their proprietary networks. However, the Commission must recognize that the possibility of eventual "convergence" of wire-based distribution technologies simultaneously delivering video, voice and data communications is simply not a sufficient justification for a wholesale revision of the Commission's inside wiring rules.

Regardless of the pace with which established telephone companies begin to provide video services or cable television companies begin to provide telecommunications and information services, the Commission must assiduously guard against policies which, under the guise of "convergence," result in forcing all competing wire-based providers to offer their services over a single broadband network.[2/] Rather, the Commission should pursue policies which foster opportunities for a plethora of wire-based and wireless service providers to simultaneously offer diverse services over competing facilities.

[2/]For example, while many telephone companies may be constructing stand-alone, broadband video distribution systems alongside their existing narrowband telephone facilities, or offering video through MMDS, DBS or other wireless means, there is no tangible evidence in announced business plans or in the comments that telephone companies will abandon their twisted-pair narrowband networks even as they proceed to deploy broadband networks.

More specifically, for the purposes of the instant rulemaking, it is crucial for the Commission to understand that even as competitors begin to provide additional services over broadband networks, the inside wiring used to carry such services within the customer's dwelling unit will remain separate for the foreseeable future. Given the massive imbedded base of telephone CPE, compatible only with narrowband inside wiring, it is highly unlikely that consumers will discard their narrowband inside wiring. Even as cable operators begin to deliver telephony services over their broadband networks, the actual telephone service delivered within the home or MDU residence will be over traditional "twisted pair" narrowband wiring.[3/] Similarly, consumers are likely to demand one or more sets of broadband wiring within their homes to transmit video, data, Internet access and other services to various consumer devices compatible with broadband connections, such as TVS, VCRs, and computers. Thus, the Commission's inside wiring rules must proceed from the premise that consumers are likely to demand both narrowband and broadband wiring installed within their dwelling units, and the point of demarcation rules and other issues raised in this proceeding must be resolved accordingly.

Time Warner therefore strongly believes that the Commission must continue to recognize the substantial differences, both technical and practical, between narrowband telephone and broadband video technology. In addition, Time Warner agrees with

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[3/] See Cox Comments at 2-3. For the foreseeable future, as demonstrated by the comments of MFS, twisted pair telephone lines are likely to be used by competing narrowband providers solely to carry simple voice and data traffic.

commenters[4/] who argue that before all the issues to be resolved by the Telecommunications Act of 1996[5/] are implemented, and before industry participants have fully had a chance to respond to opportunities presented by the legislation, it would be imprudent for the Commission to move too quickly on this issue, thereby risking favoritism for particular providers and particular technologies, to the detriment of real competition. Rather, the Commission should maintain rules which recognize the fundamental differences between narrowband networks, which are capable of delivering only one limited service at a time, and broadband networks, which are capable of delivering an expanding array of services simultaneously. In order to fully carry out the clear mandate of Congress, the Commission must pursue policies which allow consumers the maximum choice to mix and match services offered by multiple facilities-based competitors, including providers utilizing narrowband, broadband, or wireless networks.

II. THE COMMISSION'S CURRENT POINT OF DEMARCATION RULES ARE MOST EFFECTIVE TO ENCOURAGE FACILITIES-BASED COMPETITION

Time Warner, as stated in its original comments, believes that the current point of demarcation rules, with only minor changes, best serve to promote competition and consumer choice. While the telephone and cable inside wiring rules applicable to single family homes should be harmonized at this time at a single point of demarcation, adoption of any commenter's proposal to change the point of demarcation for multiple dwelling unit ("MDU")

[4/] See, e.g., Charter Communications/Comcast Comments at 21; TCI Comments at 1-9.

[5/] Telecommunications Act of 1996, Pub.L. 104-104, 110 Stat. 56 (1996) ("1996 Act").

buildings would undermine Congress' express directives to promote facilities-based competition, and therefore must be rejected.

A. There appears to be no objection among commenters to establishing a common point of demarcation in single family homes.

Commenters broadly supported adoption of a single point of demarcation for both broadband and narrowband services in single family homes.[6/] Time Warner agrees that the Commission's rules governing cable and telephone inside wiring in single family homes can be readily harmonized to the benefit of service providers and consumers. Time Warner joins other commenters in working towards a future in which the majority of single family homes are able to receive multichannel video programming, telephony and other telecommunications services simultaneously from a diverse choice of facilities-based providers. Time Warner strongly believes that a common single family home point of demarcation best serves these purposes.

Therefore, in the single family home context, there is little reason to maintain separate demarcation points for different services provided over broadband vs. narrowband wires. Consumers should be able to make seamless transitions among service providers by simply connecting inside wiring to the alternative provider's distribution network at a readily accessible point of demarcation. If a consumer desires multiple services from multiple providers, this can and should be easily be accommodated at a single point of demarcation.

[6/] See, e.g., AT&T Comments at 6; Cincinnati Bell Comments at 2; GTE Comments at 8-9; Pacific Bell Comments at 6; USTA Comments at 3-4; US West Comments at 4-6; DirecTV Comments at 8.

Competing providers should also be able to co-locate their respective network interface units at this point, thus allowing for easy transitions between different telecommunications providers based on the customer's preferences.

Time Warner agrees with the vast majority of commenters who advocate a common point of demarcation at or about 12 inches outside of the point at which the wiring actually enters the home. An exterior point of demarcation will allow service connections and disconnections, as well as testing, without necessitating the presence of the resident to allow access to the interior of the home. An exterior demarcation point also facilitates proper grounding in accordance with applicable electric codes.

B. The Commission's MDU point of demarcation rules should be retained.

Time Warner opposes the proposals of many commenters that would in effect superimpose the narrowband telephone point of demarcation upon multichannel video delivery services serving MDUs with broadband distribution networks. Such a change would be far beyond the statutory and constitutional power of the Commission. Furthermore, the narrowband telephone inside wiring rules are inadequate to promote true facilities-based broadband competition in MDU buildings. The Commission should instead retain the existing broadband point of demarcation, make it applicable to all multichannel video programming distributors ("MVPDs"), and thus create incentives for competing providers to build their own distribution facilities within MDUs in order to serve MDU residents. In addition, proposals that would move the existing broadband point of demarcation to any point away from MDU tenants' actual dwelling units, or turn over cable company wiring within MDUs to competitors

or landlords, would stifle facilities-based competition, hamstring cable operators' ability to offer new and diverse services including local exchange service, and would only augment the bottleneck power of landlords.

1. Any change in the MDU point of demarcation for broadband facilities would contravene express Congressional directives.

Contrary to the assertions of many commenters, any change in the broadband point of demarcation would violate Congress' express directives as contained in the 1992 Cable Act and the 1996 Act. Nothing in either the 1992 Cable Act or the 1996 Act gives the Commission the authority to force cable operators to turn over critical portions of their MDU internal distribution facilities to competitors or former subscribers. Specifically, Time Warner urges the Commission to take cognizance of the following restrictions on its authority when dealing with the cable point of demarcation in MDUs:

- In the 1992 Cable Act, Congress directed the FCC to establish the broadband point of demarcation where the wiring enters "the interior premises of a subscriber's dwelling unit."

- The 1996 Act is explicitly premised on the promotion of facilities-based competition, a goal that would be undermined in MDUs if the point of demarcation is moved.

- The 1996 Act reaffirms that cable operators must be allowed to retain ownership and control of broadband wiring extending "from the last multi-user terminal to the premises of the end-user."

- The anti-buyout provisions of the 1996 Act also direct the Commission to adopt policies which promote facilities-based competition rather than allow a competitor to take over facilities installed by an existing provider.

- Any change in the MDU demarcation point would be contrary to

Congress' intent in adopting the 1996 Act to promote private sector deployment of advanced telecommunications facilities.

Congress has spoken forcefully and unambiguously on the point of demarcation issue not just once, but twice. Time Warner submits that commenters who propose any change in the MDU point of demarcation are exhorting the Commission to disregard express Congressional directives.

a. The 1992 Cable Act expressly limits the Commission's authority with regard to inside wiring rules.

Time Warner challenges the assertions of commenters that the Commission can alter the point of demarcation in MDUs without running afoul of Section 16(d) of the 1992 Cable Act. For example, the Independent Cable and Telecommunications Association ("ICTA"), in its comments, encourages the Commission to "deem" the MDU property owner the "subscriber" in MDUs for purposes of circumventing the restrictions contained in Section 16(d), which the ICTA readily concedes limits the Commission's authority to extend the demarcation point.[7/] ICTA argues that the Commission should deem the MDU property owner to fall within the class of persons Section 16(d) was designed to protect because it, just like a single-home subscriber, would have to incur the costs to rewire the building if the cable operator pulled its wiring out of the MDU.[8/] ICTA therefore labels Section 16(d)

[7/]ICTA Comments at 9-11.

[8/]Of course, no cable operator is likely to go to the extreme of actually pulling its wiring out of an MDU. Cable operators' future competitiveness in providing an entire range of broadband services is crucially dependent on maintaining control of their installed wiring and distribution facilities. In fact, as ICTA's Comments at 21 demonstrate, even if a landlord terminates a cable operator's access to an entire MDU, the wiring is almost always left in place.

"ambiguous," which it alleges gives the Commission the ability to construe Section 16(d) so as to find the MDU owner within the definition of a "subscriber".

The Commission should reject ICTA's invitation to play fast and loose with the language of Section 16(d). Section 16(d) could not be more clear; it specifically states that the home wiring rules are to apply to "cable installed by the cable operator within the premises of [the] subscriber."[9/] In the legislative history, Congress confirmed that Section 16(d) "limits the right to acquire home wiring to the cable installed within the interior premises of a subscriber's dwelling unit,"[10/] and that it does not apply to "any wiring, equipment or property located outside of the home or dwelling unit."[11/] Specifically addressing the situation in MDUs, Congress determined that the point of demarcation must be established so as to apply only to "wiring within the dwelling unit of individual subscribers," and not to any wiring or facilities, such as the risers, amplifiers and homeruns, located in the common areas of MDU buildings.[12/] Thus, even in a bulk billing situation where a single cable bill is sent to the landlord, and thus the landlord might be viewed as a "subscriber," Section 16(d) nevertheless cannot apply to wiring outside individual dwelling units in the MDU. ICTA's argument that the Commission can read Section 16(d) in any other way, or that there is any ambiguity, is simply inaccurate and self-serving. Proposals that would extend the broadband point of

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[9/]47 U.S.C. § 544(I) (1992) (emphasis added).

[10/]H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report") (emphasis added).

[11/]Id. at 118-19.

[12/]Id. at 119.

demarcation to a point far outside the resident's dwelling unit simply could not be adopted without violating Congress' intent when it enacted Section 16(d).

AT&T, in its comments, argues that because cable operators will be using their broadband networks for both video and telephony, and because the portion dedicated to each service is indistinguishable from the portions dedicated to the other, the Commission's established authority to set and to move the telephone demarcation point in order to promote competition also gives it the authority to move the cable/broadband demarcation point.[13/] Further, Pacific Bell argues that "there is every reason to conclude that if the Commission had the authority the change its rules governing telephony inside wiring, it has the same authority with regard to cable and broadband wiring."[14/] Contrary to such claims, the Commission's power to set the telephone demarcation point, as established by the D.C. Circuit in NARUC v. FCC,[15/] was nothing more than a judicial proclamation of the Commission's jurisdiction over the matter due to its effect on interstate communication. The court in NARUC was responding to the absence of an express statutory provision, in the Communications Act or otherwise. Cable operator broadband wire is, on the other hand, specifically covered by provisions of the Communications Act. Unlike the situation applicable to telephone wiring, Congress has explicitly spoken to the issue of broadband inside wiring and the Commission does not have the authority to move the cable point of demarcation far outside the subscriber's dwelling unit.

[13/]AT&T Comments at 10-13.

[14/]Pacific Bell Comments at 14.

[15/]880 F.2d 422 (D.C. Cir. 1989).

b. The 1996 Act explicitly demonstrates Congress' intention to promote facilities-based competition.

The 1996 Act is premised on promoting facilities-based competition, both broadband and narrowband. An overview of the 1996 Act and corresponding legislative history makes this abundantly clear. For example, the Conference Report states, on the very first page, that the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[16/] Congress expected that the 1996 Act would promote facilities-based competition by, for example, encouraging telephone companies to further build and develop their own broadband networks. As noted by the House Report:

> Telephone company entry into the delivery of video services will encourage telephone companies to modernize their communications infrastructure. Specifically, the deployment of broadband networks would be accelerated if telephone companies were permitted to offer video programming. These networks would be capable of transmitting voice, data, and video to consumers. Without this incentive, telephone companies will build advanced networks more slowly. Moreover, telephone company entry into cable would encourage technological innovation.[17/]

In addition, in Section 1 of the 1996 Act, Congress adopted specific provisions that remove barriers to facilities-based local exchange competition by requiring local exchange carriers to interconnect with other carriers' networks, clearly providing an incentive for

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[16/]H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996).

[17/]H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 53 (1995).

competitors to build their own networks and facilities and not simply resell the local exchange carriers' services.[18/] Additionally, Congress provided that the primary circumstance that must be met for a Bell Operating Company to enter the in-region interexchange market includes the existence of facilities-based competitors offering competitive local exchange services within its region.[19/] All these provisions not only serve to open the door to new service providers, but also clearly evidence Congress' overriding goal to promote facilities-based competition.[20/]

Congress also touted the unique position of cable operators to provide this facilities-based competition to the local exchange carriers:

> ...meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has

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[18/]1996 Act, § 101 et seq.

[19/]Id. at § 151(c).

[20/]Chairman Hundt has repeatedly recognized the benefits of facilities-based competition. In a Statement before the Committee on Commerce, Science and Transportation on February 23, 1994, Chairman Hundt testified that "direct, facilities-based competition between cable and telephone companies will produce substantial benefits for the American public." Statement of Reed Hundt, before the Committee on Commerce, Science and Transportation, U.S. Senate, on February 23, 1994. In addition, in a speech to the American Bar Association, March 28, 1996, Chairman Hundt proclaimed, "Horizontal competition is enhanced to the degree that the Commission can create more conduits or pathways or channels to the consumers." "News Flash! FCC Wins Oscar for Brave-Hearted Application of Antitrust Theory of Vertical Integration in Broadcasting," Speech by Chairman Reed Hundt to the American Bar Association, March 28, 1996. The Commission should take the Chairman's words to heart, and retain the existing MDU demarcation point which promotes horizontal competition by encouraging telecommunications providers to build more "conduits and pathways" to each particular consumer instead of merely piggy-backing on the existing facilities of incumbents.

consistently been contemplated.[21/]

Congress recognized that cable operators are in a prime position to act as facilities-based competitors to local exchange carriers because existing cable infrastructure is adaptable to the provision of telecommunications service. If cable operators are precluded from continued use of a crucial portion of their MDU distribution infrastructure, their ability to offer voice telephony, data service and Internet access, as well as to raise significant capital necessary to compete with incumbent local exchange carriers, will be greatly impaired to the detriment of MDU residents.[22/]

Further, the Commission must not overlook the words of the enactors themselves. In discussing restrictions on in-region mergers of cable and telephone companies, Senator Thurmond stressed the need "to promote competition between the two wires -- cable and telephone -- that already run to the home, and avoid a single monopoly provider of both cable and telephone services, which would result in higher cable and telephone prices for

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[21/]H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996).

[22/]As Time Warner noted in its Comments at 14-15, in the Video Dialtone Orders, the Commission itself recognized the benefits of facilities-based competition in requiring telcos to build their own broadband networks to enter the video delivery business. To paraphrase, the Commission recognized that facilities-based competition resulting from multiple overlapping broadband networks built by competing MVPDs (1) constrains rates; (2) creates incentives to develop infrastructure and new services; (3) results in increased channel capacity; (4) promotes new programming options; and (5) facilitates development of competing local exchange telephone networks. See In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781, ¶ 110 (1992); In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58 and Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244, ¶ 49 (1994).

customers."[23/] Senator Kerry echoed the fundamental national policy in favor of facilities-based competition: "[A]nother particular provision of this legislation that says a local telephone company can buy a local cable company, we cannot allow that in the local area, because then you are only going to get one line to 75 percent of the homes."[24/]

That Congress intended to promote facilities-based competition when it adopted the 1996 Act could not be more clear. Accordingly, in implementing Congress' intent to promote the construction of multiple broadband infrastructures, the Commission cannot adopt any policy that would deny MDU residents the benefits conferred by Congress. Proposals to move the demarcation point away from its current location near the MDU resident's dwelling, thereby depriving consumers of the benefits of facilities-based competition which can be realized only if competing MVPDs build distinct broadband networks to each unit, simply do not accomplish Congressional objectives and therefore must be rejected.

c. Provisions contained in the 1996 Act only reinforce the 1992 Cable Act's approach to inside wiring.

Contrary to assertions that moving the MDU point of demarcation would be pro-competitive and therefore would be within the letter and spirit of the 1996 Act, a careful reading of the statute and consideration of the practical effect of moving the MDU point of demarcation reveals that such a radical change is precluded by the 1996 Act. Instead of freeing the Commission's hands with regard to its authority to change the MDU point of

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[23/]41 Cong. Rec. 872 (June 15, 1995).

[24/]41 Cong. Rec. 798 (June 8, 1995).

demarcation, the 1996 Act reinforces Congress' approach in 1992 when it adopted Section 16(d). Two provisions in particular, the "Joint Use" provision and the "Anti-Buyout" provision, repudiate any argument that the 1996 Act can be read to extend the Commission any authority to alter the MDU point of demarcation.

First, the "Joint Use" provision of the 1996 Act expressly contradicts any suggestion that the point of demarcation in MDUs for broadband facilities be moved outside the end users' premises. Sec. 652(d)(2) provides as follows:

> (2) JOINT USE -- Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

In adopting this provision, Congress clearly intended for MDU homeruns installed by the cable operator to remain under the control of the cable operator. The decision to allow a local exchange carrier to share the use of such homeruns lies within the sole discretion of the cable operator, and even then any such permission which the cable operator may choose to grant must be "reasonably limited in scope and duration." Moreover, by acknowledging that the facilities of the cable operator extend "to the premises of the end user," Congress has again reiterated its intent, as originally set forth in the 1992 Cable Act, that the point of demarcation be located in close proximity to the actual customer's premises, i.e., the individual dwelling

unit or office in an MDU building.[25] Finally, when Sec. 652(d)(2) was enacted, Congress was fully aware that several parties had urged the Commission to reconsider its decision in MM Docket No. 92-260 and move the point of demarcation to the point where the last multi-user terminal splits off to a cable extending to an individual subscriber. Adoption of Sec. 652(d)(2) was intended to firmly instruct the Commission to reject any such changes in the point of demarcation which would result in a relinquishment of control by the cable operator of distribution facilities located far outside the customer's dwelling unit.

Second, the anti-buyout provisions of the 1996 Act, contained in Section 302,[26] are designed to ensure that consumers are given at least two options to obtain services from competing wire-based, broadband facilities.[27] By forcing local exchange carriers to build their own broadband distribution networks if they want to compete with existing cable operators, the anti-buyout provisions ensure that consumers will truly enjoy a choice between at least two

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[25] ICTA argues that the Joint Use provision of Section 652(d)(2) does not cover wiring inside an MDU "at all, but rather addresses the exterior cable drop running from the curb up to the single-family home or MDU building." ICTA Comments at 28-29. ICTA offers no support for this argument other than that such a construction of Section 652(d)(2) would be consistent with ICTA's erroneous interpretation of Section 16(d). The Commission must reject such overreaching and circular arguments.

[26] See 1996 Act at § 302.

[27] These provisions add a new Section 652 to the existing Communications Act. Under Section 652, no local exchange carrier may acquire more than a ten percent financial interest or any management interest in any cable operator providing cable service within the carrier's telephone service area. Similarly, no cable operator or affiliate may acquire more than a ten percent interest or any management interest in any local exchange carrier that provides telephone exchange service within the cable operator's franchise area. A local exchange carrier and cable operator in the same market may not enter into a joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within that market. Joint ventures and partnerships for other purposes, including the construction of joint facilities to provide such services separately, are not barred.

entirely separate competing broadband networks. If incumbent telephone companies desire to compete with cable operators for the delivery of broadband service, these provisions are designed to require construction of overlapping broadband distribution networks. By generally prohibiting buyouts of the incumbent cable operator by the local telephone company, Congress has emphatically proclaimed its preference for facilities-based competition. In a world with access to at least two broadband wires, consumers can seamlessly switch between providers, or can customize their own mix of services offered by several providers simultaneously. In a world with only one wire to access, consumer choice is minimized, especially if the only choice is the one dictated by the landlord.

d. Any change in the demarcation point would discourage cable operators from investing in further MDU network upgrades contrary to Congress' intent to promote the deployment of advanced telecommunications services.

The Commission must not undertake any policy that discourages cable operators from further upgrading their MDU broadband distribution facilities. To do so, by moving the broadband demarcation point or mandating access to internal wiring for the benefit of competing MVPDs, would run contrary to Congress' express direction to the Commission to adopt rules that promote incentives for the development of advance communications facilities. Congress, in implementing the 1996 Act, clearly intended to promote, not destroy, private sector investment in advanced telecommunications facilities and infrastructure development. Congress recognized the value of insuring that advanced network capabilities are accessible to every consumer, whether they are rich or poor, urban or rural, or live in a single family home or in an MDU. Without question, one of Congress' overriding goals in enacting the 1996 Act